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THE UNITED STATES SETTLES ITS ANTI-FRAUD CLAIMS FOR INJUNCTIVE RELIEF AND 20 STATE ATTORNEYS GENERAL SETTLE UNFAIR TRADE PRACTICES CLAIMS AGAINST MEDCO HEALTH SOLUTIONS

Medco To Provide Price Information To Doctors And Patients And Pay $29 Million Plus To States In Damages, Fees, And Restitution – Federal Damages Case Continues

PHILADELPHIA – United States Attorney Patrick L. Meehan joined 20 state Attorneys General today in announcing the settlement of claims for injunctive relief and state unfair trade practices laws against Medco Health Solutions, Inc. (Medco), the world's largest pharmaceutical benefits management (PBM) company. An investigation by the United States for more than four years led to the development of a cooperative federal-state investigative effort, spearheaded at the state level by the Attorneys General of Pennsylvania, Maine, and Massachusetts. The consent order filed in the federal district court for the Eastern District of Pennsylvania will not dismiss claims for damages, penalties, or restitution under federal statutes and common law. That portion of the federal case will continue. Medco continues to deny the federal allegations.

In December 2003, the United States, through the United States Attorney's Office for the Eastern District of Pennsylvania, filed an amended complaint against Medco in which it alleged, among other things, that Medco encouraged prescribers to switch patients to different prescription drugs but failed to pass on the resulting savings to patients or their health care plans. The drug switches generally benefited Medco despite Medco's claims that they saved money for patients and health plans. Medco did not tell prescribers or patients that the switches would increase rebate payments from drug manufacturers to Medco.

The attorneys general filed complaints in state courts today settling similar allegations. Both the United States and the attorneys general allege that the drug switches resulted in increased costs to health plans and patients, primarily in follow-up doctor visits and tests. For example, Medco switched patients from certain cholesterol lowering medications to Zocor, but that switch usually required patients to receive follow-up blood tests.

"When getting the proper medication in the proper amounts to the consumer as quickly as possible isn't the focus of a pharmacy benefit manager, it's ultimately the patient who suffers," said Meehan. "We want to make sure that profits never come before patients and today marks an important step toward forever changing the way all PBMs do business."

The United States is joined in this landmark settlement by: Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Nevada, New York, North Carolina, Oregon, Pennsylvania, Texas, Vermont, Virginia, and Washington.

The settlement prohibits Medco from soliciting drug switches when:

- The net drug cost of the proposed drug exceeds the cost of the prescribed drug;
- The prescribed drug has a generic equivalent and the proposed drug does not;
- The switch is made to avoid competition from generic drugs; or
- The switch is made more often than once in two years within a therapeutic class of drugs for any patient.

The settlement requires Medco to:

- Disclose to prescribers and patients the minimum or actual cost savings for health plans and the difference in co-payments made by patients;
- Disclose to prescribers and patients Medco's financial incentives for certain drug switches;
- Disclose to prescribers material differences in side effects between prescribed drugs and proposed drugs;
- Reimburse patients for out-of-pocket costs for drug switch-related health care costs and notify patients and prescribers that such reimbursement is available;
- Obtain express, verifiable authorization from the prescriber for all drug switches;
- Inform patients that they may decline the drug switch and receive the initially prescribed drug;
- Monitor the effects of drug switches on the health of patients; and
- Adopt the American Pharmacists Association code of ethics and principles of practice for pharmaceutical care for employees at its mail order and call center pharmacies.

The federal investigation has been conducted by the Office of Personnel Management and the Office of Inspector General for the Department of Health and Human Services.

A consent order with the United States will be filed in federal district court, and the United States will dismiss only its claim for injunctive relief at Count VI of the amended complaint filed December, 2003, at <u>United States of America v. Merck-Medco Managed Care L.L.C. et al.</u>, Civil Action Number 00-737. The damages portion of the federal case will proceed. A separate consent order will be filed by the states to cover the injunctive and monetary claims for which Medco will pay $20 million to the states in damages, $6.6 million to the states in fees and costs, and about $2.5 million in restitution to patients who incurred expenses related to a certain switch between cholesterol controlling drugs. Some states have elected to receive prescription drug cards in lieu of their monetary payment. States receiving a monetary payment must use the funds to benefit low income, disabled, or elderly consumers of prescription medications, to promote lower drug costs for residents of the state, or to fund other programs reasonably targeted to benefit a substantial number of persons affected by the conduct covered in the complaint.

U.S. Attorney Meehan praised the partnership that the Eastern District of Pennsylvania developed with the states attorneys general. “Establishing a cooperative effort between federal and state law enforcement officials has proven to significantly benefit health care consumers across the nation. This settlement provides a very good example of the great strides that can be made by such joint efforts.”

Added Meehan: “Although the settlement of the United States’ claims against Medco for injunctive relief does not resolve the remaining counts of the amended complaint filed against the company in December 2003, we believe that the changes in Medco’s business practices resulting from this agreement will positively impact health care consumers across the nation.”

Medco is the nation’s largest PBM, with over 62 million covered people. PBMs contract with health plans to process prescription drug payments to pharmacies for drugs provided to patients enrolled in the health plan. In the thirty years since the first PBMs appeared, their services have evolved to include complex rebate programs, pharmacy networks, and drug utilization reviews.

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